amount required for compensation, — since it would not seem possible in this case to divide the consequential loss. The plaintiff, having the legal right to recover the value of the contract, gets it, though it may do more than make him individually whole; as where a party sues on a contract made wholly or partly for the benefit of a third person. There seems to be no case just like the one under discussion. A somewhat analogous case is that where damages for a tort are not reduced by the previous payment to the plaintiff on a policy of insurance. *Perrott* v. *Shearer*, 17 Mich. 48; 1 Sedg. Dam., 8th ed., § 67. See also *Elmer* v. *Fessenden*, 154 Mass. 427.

So the question stands at strict law. Whether equity might modify the rights of the parties, and how far such modification might be made available as an equitable defence by either B or C in the action at law, are matters upon which the actual decisions throw no light. See *Gooding* v. *Shea*, 103 Mass. 360; *Jackson* v. *Turrell*, 39 N. J. L. 329.

"PUBLIC DEFENDERS." — Mrs. Clara Foltz of the New York Bar is firmly convinced that there is at least one serious defect in our judicial system. While the criminal court is admirably equipped with machinery for the prosecution of offences, it is lamentably deficient, she believes, in the machinery for defence. The unfortunate prisoner who is unable to pay for counsel must expect to be prosecuted by the ablest of attorneys, backed up by all the resources of the State, and only too frequently to be defended, if at all, by a court appointee who is wholly inferior to the men with whom he must cope. The remedy for this, Mrs. Foltz finds in the creation of a new officer, to be called the Public Defender. She has formulated her ideas in a bill which is to be laid before the legislature of New York. It provides for the election to the office of an attorney at law in each county, whose duty it shall be "to attend all criminal courts, and to appear for and defend all persons charged with violation of the law who are without counsel and who desire an attorney to appear for them."

While an impecunious prisoner whose case is tried in one of the smaller towns, where it will become matter of common talk among lawyers, is not likely to suffer for want of competent counsel to defend him, it is apt to be different amid the hurry and bustle of litigation in the large cities, where such things pass by unnoticed. Even there it may perhaps be doubted if substantial injustice is often done a prisoner under the present system. If he is not adequately represented by counsel, the average judge is likely to guard his interests well enough, if not to err on the side of leniency. It is an unpleasant position for the judge, however, and of course involves a departure from the strictly judicial function. Mrs. Foltz's idea certainly merits consideration.

THE SUPREME COURT AND THE PRESUMPTION OF INNOCENCE. — In *Coffin* v. *United States*, 156 U. S. 432, it will be remembered that the Supreme Court held it was error for the judge, in a criminal case, to refuse to charge as to the presumption of innocence, notwithstanding that the jury were explicitly told that they must be satisfied of the prisoner's guilt beyond a reasonable doubt. As a purely theoretical question, the decision seems wrong. It may perhaps be supported, however, as was pointed out in 9 HARVARD LAW REVIEW, 144, on the practical ground

that the open refusal so to charge might have misled the jury. But the famous *dicta* in the opinion of the court, to the effect that the presumption is evidence in favor of the accused, seem clearly indefensible. The late case of *Agnew* v. *United States*, 17 Sup. Ct. Rep. 235, throws some light on the position the Supreme Court really takes on the question. In that case it was assigned as error that the judge charged as follows: "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant until such time, in the progress of the case, that you are satisfied of the guilt beyond a reasonable doubt." Also that he refused to give the following instruction: "Every man is presumed to be innocent until he is proved guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence, to the benefit of which the party is entitled. This presumption is to be treated by you as evidence, giving rise to resulting proof, to the full extent of its legal efficacy." The court held that the instruction given was quite correct, and substantially covered that requested; that *Coffin* v. *United States* was in no way disregarded, as the presumption of innocence was clearly stated. It is the doctrine of the Supreme Court, then, that to tell the jury that the presumption remains with the defendant until his guilt is proved beyond a reasonable doubt, is equivalent to telling them that it is evidence to the benefit of which he is entitled. Does not this look as if the position really taken by the court is that the presumption is a substitute for evidence, and not evidence itself? If the presumption of innocence is a true presumption, this is undoubtedly sound doctrine.

A CASE UNDER THE THIRTEENTH AMENDMENT. — It is interesting to find the Supreme Court dealing with the application of the Thirteenth Amendment to circumstances entirely unconnected with the race question. That a principle of general application was added to our constitutional law by the amendment is not to be doubted (Story on the Constitution, 5th ed., § 1924), but the question is as to its scope. This came before the court in *Robertson* v. *Baldwin*, 17 Sup. Ct. Rep. 326. The Revised Statutes provide that deserting seamen may be taken before a justice of the peace and by him committed to jail, to be delivered to the master on the sailing of the vessel, or sooner on demand. The court bases its decision that these sections of the Revised Statutes are constitutional on two grounds. One is that this sort of thing has always been found necessary. Provisions of a like character, and often very harsh, are to be found in the law of every maritime nation, beginning with that of the Rhodians. This kind of argument, showing that the framers of the Amendment could not have aimed at the practices complained of, is the regular and satisfactory way of dealing with these questions of interpretation. Nor will the soundness of the result be doubted. It is absolutely certain that those engaged in securing the benefits obtained from the Civil War did not mean to prevent the customary methods of enforcing obligations recognized by civilized nations foremost in the crusade against slavery. The system of discipline on a ship does not resemble slavery. The master is all powerful aboard, but he is answerable in court for his acts when the voyage is over. One of the evils of slavery was its effect upon the dominant race. It is not perceived how the responsibility of the master of a vessel can have an evil influence upon him. Nor is it at all clear how discipline can